IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 100 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.DAGINA

Versus

DY.C.I.T.

Appearance:

1. TAX APPEAL No. 100 of 2004
MR SN DIVATIA for the Appellant
MR MANISH R BHATT for the Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 18/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA for the Court)

1. This appeal has been preferred by the assessee appellant from the order dated 11th August 2003 made by the Income-tax Appellate Tribunal, Ahmedabad Bench "SMC" in ITA No.1109/Ahd/2001 for Assessment Year 1997-98. The assessee has proposed the following four questions :

(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the rejection of books of account of the appellant as well as the addition aggregating to Rs.2,12,047/- on account of alleged non-maintenance of day-to-day stock and fall in gross profit rate?

(2) Whether on the facts and circumstances of the case, there was any material with the Appellate Tribunal to uphold the rejection of books of account and the addition of Rs.2,12,047/-.

(3) Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in law in upholding the addition of Rs.2,12,047/without passing a speaking and reasoned order as well as without considering the evidence produced before it?

(4) Whether on the facts and in the circumstances of the case, the conclusion arrived at by the Tribunal was contrary to the material on record and perverse or upon a view of the facts and evidence on record it could reasonable by arrived at?"

2. Heard Mr.Samir N.Divatia, the learned advocate for the appellant.

3. ADMIT. The following substantial question of law arises from the impugned order of the Tribunal:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the rejection of books of account as well as addition aggregating to Rs.2,12,047/- without assigning any reasons?"

4. On 21st December 2004, notice was issued for final disposal. Mrs.M.M.Bhatt, the learned standing counsel appears for the respondent - revenue. Heard the

learned Advocates for the respective parties.

5. The Assessing Officer rejected the books result in absence of stock register and absence of quantitative tally and applied average rate of 14% gross profit as against 9.43% shown by the assessee in relation to gold ornaments account. The CIT (Appeals) upheld the addition. The aforesaid facts have been narrated by the Tribunal in paragraph No.2 of the impugned order.

6. In paragraph No.3, the contentions raised on behalf of the assessee have been summarized and enumerated. The Tribunal further records in paragraph No.3 that the Departmental Representative supported the orders of CIT (Appeals) and the Assessing Officer.

7. The Tribunal disposes of the appeal with the following observations in paragraph No.4 :

> "4. I have heard the parties and considered their rival submissions. There is no evidence or material to support the assessee's contentions. The AO has taken the average of three years and, therefore, assessee's contentions have no force. I, therefore, uphold the orders of revenue authorities."

8. It is an admitted position that a paper-book comprising 67 pages was furnished before the Tribunal and a copy of the same has been made available on record of this Tax Appeal. One of the contentions raised on behalf of the appellant - assessee was that overall quantity details have been maintained in the Rojmel itself and the same is the practice in this line of business. In support of the said contention, Rojmel entries are available on pages 26 to 30 of the paper-book. It was necessary for the Tribunal to deal with the contentions raised and the evidence produced before it. This is just by way of an illustrative example.

9. The Tribunal has failed to record as to what were the issues which arose for consideration and the reasons which weighed with the Tribunal in rejecting the contentions raised on behalf of the appellant. Prima facie, the finding of the Tribunal that "there is no evidence or material to support the assessee's contentions" does not appear to be correct in light of the paper-book which was filed before the Tribunal.

10. The Court must not be understood to be laying down a proposition that, in a case where the orders of

the lower authorities are required to be upheld, the Tribunal must discuss each and every piece of evidence, but at the same time, it is necessary for the order of the Tribunal to reflect that the Tribunal was aware of the controversy that it was called upon to decide and application of mind by the Tribunal to the said controversy.

11. Before parting, it is necessary to take note of the fact that, recently, the Court has come across number of orders of the Tribunal wherein the appeals have been disposed of cursorily, to say the least. The Income Tax Appellate Tribunal is a Body which has earned a name and reputation for itself as a leading institution dispensing quick justice and it is hoped that the Tribunal shall maintain the standards it has set for itself.

12. In this view of the matter, the question referred to the Court is answered accordingly and the impugned order dated 11th August 2003 is quashed and set aside. The appeal, being ITA No.1109/Ahd/2001 is restored to the file of the tribunal for being decided afresh after giving full and proper opportunity to the parties to make their submissions.

13. The appeal is accordingly allowed. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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